

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FURMINATOR, INC.,)	
)	
Plaintiff,)	
)	Case No. 4:08-CV-00367-ERW
v.)	
)	
KIM LAUBE & CO., INC.)	
)	
Defendant.)	

**DEFENDANT'S OBJECTION TO THE
STATEMENT TO BE READ AFTER
INTRODUCING COUNSEL AND BEFORE VOIR DIRE FILE BY PLAINTIFF**

Defendant Kim Laube & Co., Inc. ("Laube") provided FURminator, Inc. ("FURminator") with its latest revisions to what was to be an agreed statement to be read to the jury before voir dire at about midnight on February 20, 2011 so that any additional changes could be discussed. FURminator adopted some of those changes, but omitted clearly factually accurate information and misrepresents the Court's Order granting summary judgment of infringement. In particular, the redlined version provided by KL&C's counsel to FURminator's counsel included the following:

Defendant Kim Laube & Co., Inc. (or Laube) is a company based in Oxnard, California. Kim Laube started his business in his garage when he was 15 years old. Laube has been in the business of manufacturing, marketing and selling electric clippers, ~~and~~ clipper blades and other grooming equipment and tools for the pet grooming industry for approximately 35 years. The United States Patent and Trademark Office has issued 9 patents between 1985 and 2007 to Kim Laube for his inventions of grooming equipment including animal grooming clippers, clipper blades, clipper housings and groomer casings.

FURminator seeks money damages from Laube for infringing the '540 Patent because of Laube's marketing and selling the Laube iVac Tool, the Laube Lazor Adjustable Blade Rake, and the Laube Quik-Change Tool. The Court has already determined that the Laube iVac Tool, the Laube Lazor Adjustable Blade Rake, and the Laube Quik-Change Tool, when each is sold and used with a #40 clipper blade, infringe the '540 Patent. ...

With regard to the first paragraph, the modifications properly reflect Mr. Laube's long career as an inventor and grooming tool manufacturer. However, those facts don't fit with FURminator's apparent presentation theory that Kim Laube and Co. is a big manufacturing company while FURminator is a small, local mom and pop operation. In reality, FURminator is the multi-million dollar entity while KL&C is the small, family owned and operated business.

Regarding the second paragraph, the summary judgment granted by the Court found that the noted tools, when equipped with clipper blades, infringe the patent in suit. In fact, the Court's analysis expressly considered the tools with the blades attached, but did not consider any of the tools with attachments other than a blade. It is KL&C's understanding that not even FURminator contends that the accused tools, when equipped with attachments that are NOT blades, infringe. A simple review of claims 1 and 63, the only claims at issue, (in fact all the claims in the patent in suit) require a "blade portion". Rakes and combs clearly cannot fit that definition, yet KL&C sells substantial numbers of their handles for use with rakes, combs and other attachments too. FURminator wishes to mislead the jury into believing that there is no non-infringing use and into believing that the tools, with or without blades, infringe. That is clearly not the case and KL&C is entitled to a proper and non-misleading instruction in that regard.

WHEREFORE, KL&C objects to the allegedly "Joint" statement of the case to the extent that the proposed modifications are not made to the "joint" statement.

Dated: February 21, 2011

Respectfully submitted,

/s/Kent A. Rowald/s/ .

Kent A. Rowald

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**ATTORNEYS FOR DEFENDANT,
KIM LAUBE & CO., INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on counsel for Furmimator, Inc. through counsel of record Alan H. Norman, Steven E. Garlock, David B. Jenkins, Matthew A. Braunel, Jonathan G. Musch, and Fredericka B. Jura, **Thompson Coburn LLP**, One US Bank Plaza, St. Louis, MO 63101 via facsimile, and/or prepaid first class mail, and/or electronic mail and/or in accordance with the Electronic Court filing system guidelines on February 21, 2011

/s/ Kent A. Rowald /s/

Kent A. Rowald